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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8 OF 2013

Maruti Sayaji Malusare and Ors. ..Petitioners
V/s.
The State of Maharashtra and Ors. ..Respondents

Mr. Mankirat Singh I/by Mr. Niranjan A. Mogre for the petitioners.

Mr. V.S. Gokhale, AGP for the respondents.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.
DATED : 21st OCTOBER, 2015**

P.C. :-

1. Heard the learned counsel for the petitioners and the learned AGP for the State.
2. Rule. The respondent waive service. Forthwith taken up for final hearing.
3. By this petition filed under Article 226 of the Constitution of India, the petitioners have taken an exception to the judgment and order dated 9th November, 2012 passed by the Divisional Commissioner on the application made by the petitioners under sub section (1) of section 48 of the Land

Acquisition Act, 1894.

4. The notification under sub section (1) of section 11 of the Maharashtra Project Affected persons Rehabilitation Act, 1986 was published on 14th October, 1994. The contention of the petitioners before the Divisional Commissioner was that there was a partition effected by metes and bounds on 20th October, 1988. The said contention has been brushed aside by the Divisional Commissioner by holding that the deed of partition was not registered and that the entries on the basis of the Deed of partition were not made in the revenue records.

5. By amending the petition, the petitioners have annexed the copy of the document dated 20th October, 1988. Prima facie it appears to us that the said document is a recording of the partition by metes and bounds which was already effected. If the said document is the memorandum of partition which is already effected, the same will not require compulsory registration. From the documents annexed by way of amendment, it appears that on 24th October, 1988, the first

petitioner has made an application to the Circle Officer for giving effect to the document of partition dated 20th October, 1988 in the revenue records. There was an application made by the first petitioner on 5th September, 1988 informing the 'Gaaon Kamgar Talathi' about the death of the original khata holder Sayaji Rama Malusare. In the said letter, though there is no specific reference to the partition earlier effected, it is stated that the legal representatives of Sayaji were enjoying separate shares in the property.

6. In our view, the learned Divisional Commissioner ought to have examined whether the document dated 20th October, 1988 is a memorandum of partition recording a partition which was already effected or is a document by which the partition by metes and bounds were effected. According to us, the Divisional Commissioner ought to have taken into consideration the effect of the application dated 24th October, 1988 made by the first petitioner to the Circle Officer on the basis of the document dated 20th October, 1988. In our view,

without recording any finding on the nature of the document dated 20th October, 1988, the Divisional Commissioner could not have ignored such a document only on the ground that the same was not duly registered under the Indian Registration Act, 1908. We are therefore, of the view that a fresh enquiry will have to be made by the Divisional Commissioner. Accordingly, we pass the following order :

(a) The impugned order dated 9th November, 2012 is hereby quashed and set aside. The application made by the petitioners under sub section (1) of section 48 of the Land Acquisition Act, 1894 is hereby remanded to the office of the Divisional Commissioner, Pune. We direct the petitioners or their authorized representative to appear before the Divisional Commissioner, Pune on 21st November, 2015 at 11.00 a.m. The petitioners or their authorized representative shall produce before the Divisional Commissioner an authenticated copy of this order as well as certified copies of the documents at Exh. P (Pages 115D to 115K);

(b) After giving an opportunity of being heard and after perusing the necessary records, the Divisional Commissioner shall pass a fresh order on or before 30th April, 2016;

(c) The decision shall be communicated by the Divisional Commissioner to the first petitioner. Till the date of communication of the said decision to the first petitioner, ad interim relief granted in this petition will continue to operate. If the said decision be adverse to the petitioner, ad interim relief shall continue to operate for the period of four weeks from the date on which the communication of the decision is served to the first petitioner;

(d) All the contentions on merits are kept open;

(e) Rule is made partly absolute in terms of the above directions;

(f) The Divisional Commissioner to act upon an authenticated copy of this order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)